

DECLARATION OF ROBERT W. BERLINER, CPA, CFE

**FENDI ADELE S.R.L., FENDI S.R.L., AND
FENDI NORTH AMERICA, INC. Plaintiffs,**

v.

**BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION and
COHOES FASHIONS, INC. Defendants.**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT NEW YORK
Case No. 06-CV-0085 (LBS)**

MARCH 27, 2008

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FENDI ADELE S.R.L., FENDI S.R.L., AND FENDI NORTH AMERICA, INC.
Plaintiffs,

v.

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A. INTRODUCTION

In November 2007, Marks Paneth & Shron LLP ("MPS") was engaged by counsel for Defendants Burlington Coat Factory Warehouse Corporation and Cohoes Fashions, Inc. ("BCF") to determine sales of Fendi branded merchandise after 1987 and the profits from such sales. I am responsible for the performance of this engagement and am prepared to provide expert testimony with respect thereto. I have been assisted by other MPS professionals and paraprofessional staff who worked under my supervision, performed certain analyses, and interviewed certain BCF employees. MPS and I are independent of the parties in this proceeding, have no financial interest in the outcome of this matter, and our fees are in no respect contingent thereupon.

MPS is a full-service accounting firm employing over 300 professionals, some 20 of which work exclusively in the litigation services practice. I am a partner in MPS and the founder of its litigation services practice. I began my career in public accounting in 1954 and was first licensed as a Certified Public Accountant in 1960. My background is broad-based and includes international as well as domestic experience as an audit engagement partner, office managing partner, and national office accounting and auditing director. Since joining MPS in 1990, I have practiced as an accounting expert providing expert testimony and consulting with litigators in various matters.

Based on the information contained in BCF's management information system, I calculated BCF's sales of Fendi products through October 10, 2007 and the gross profit and the net profit from such sales. At the request of counsel I have prepared a summary of these items by period (see Appendix A). I am informed that copies of these summaries by period have already been provided to the Court as Defendants' exhibits F through L, respectively.

I determined that BCF's total sales of Fendi branded products were approximately \$9.1 million. By deducting from such sales the cost of products sold (or in the case of

perfume, by deducting the vendor's share of sales¹), I determined that BCF's gross profit from sales of Fendi products was approximately \$2.8 million. Following that, I subtracted from such gross profit other expenses (discussed below) related to sales of Fendi products to arrive at the pre-tax profit from such sales of \$401,397. I then calculated the provision for income taxes applicable to such pre-tax profit to arrive at the net profit from sales of Fendi products of \$248,869.

James J. Donohue, the Plaintiffs' expert, has performed a similar calculation for BCF's sales of Fendi products through March 3, 2008. Although Mr. Donohue's calculation included sales of Fendi products from October 10, 2007 to March 3, 2008, his calculation produced results similar to mine due to a very low level of such sales at the end of 2007 and the beginning of 2008.² However, Mr. Donohue stopped short of deducting any expenses related to sales of Fendi products based on a contention that no incremental expenses had to be incurred to achieve such sales.³ In essence, Mr. Donohue's calculation results in net profit on sales of Fendi products being the same as the gross profit on such sales.

Counsel has asked me to address in this declaration the issue of the deduction of expenses in calculating BCF's net profit from sales of Fendi products.⁴

Attached to this declaration are the following exhibits:

- a copy of my curriculum vitae (Exhibit A);
- a listing of cases in which I have testified as an expert at trial or by deposition within the preceding four years (Exhibit B);
- a listing of all publications that I have authored or co-authored within the preceding ten years (Exhibit C);
- a description of MPS and its litigation services practice (Exhibit D);
- a listing of the materials that I considered (Exhibit E).

B. BASIS FOR DEDUCTING EXPENSES IN CALCULATING NET PROFIT

Cost of sales (principally the purchase cost of merchandise sold), although typically the largest of a retailer's costs and expenses, is but one of many expenses necessary to

¹ BCF sold Fendi perfume products under what was essentially a consignment arrangement with Scents of Worth, its perfume vendor, where BCF received a commission on sales.

² Because Mr. Donohue and I relied on the same information provided by Burlington in performing our calculations, I believe that the differences in our results, which are immaterial and result in part from our use of different cut off points in 2007 and 2008, can be reconciled.

³ March 5, 2008 declaration and report of James J. Donohue (¶ 53)

⁴ Mr. Donohue also calculated prejudgment interest which is not addressed in this declaration.

operate a retail business.⁵ Indeed, Generally Accepted Accounting Principles recognize that the profit realized from the sale of goods must include expenses other than the cost of the goods sold.⁶

As part of its operation of a national chain of discount stores (primarily under the name Burlington Coat Factory Warehouse), BCF also operates distribution centers, maintains corporate headquarters in Burlington, New Jersey, and leases office space in New York City. To be conservative, my calculation excludes all corporate and warehousing expenses even though it is appropriate to include some portion of these expenses in determining BCF's net profit from sales of Fendi products. My calculation does, however, include a pro-rata portion of the expenses of operating BCF's stores ("store expenses") such as employee salaries and benefits, rent, utilities, local advertizing, etc. After all, to conduct its retail business, BCF had to heat its stores in the winter and cool them in the summer. My calculation also includes a pro-rata portion of the shipping expenses since the incurrence of such expenses is necessary for placing products on sales floor.⁷ Lastly, I also included the effect on BCF's net profit of vendor rebates and allowances.⁸

Since BCF tracks by product only the cost of merchandise purchased, it was necessary for me to allocate the aforementioned expenses to Fendi products. I did this based on the ratio of sales of Fendi products to total BCF sales, a rational and frequently used method of allocating expenses. This was the only method of allocating expenses to Fendi sales that I could utilize given the nature of BCF's records and the information available to me.

I also included in my net profit calculation the effect of income taxes on the pre-tax profit from the sale of Fendi goods. Mr. Donohue's calculation, to the contrary, inexplicably ignores such income tax effect. One need not be an accountant to know that there are two certainties in life: death and taxes. By excluding income taxes from his calculation, Mr. Donohue deviated from the concept of incremental costs upon which his calculation of BCF's net profit on Fendi sales was based.

⁵ According to BCF's consolidated Statement of Operations its cost of sales approximates two-thirds of its total costs and expenses. Selling and administrative expenses, the other principal expense incurred by BCF, approximates one-third of its total costs and expenses.

⁶ Accounting Research Bulletin Number 43, *Restatement and Revision of Accounting Research Bulletins*, recognizes that for the purpose of valuing inventory one must consider "reasonably predictable costs of ... disposal" of such inventory. (§ 8)

⁷ Since Scents of Worth was responsible for the cost of delivering perfume products to BCF's stores, I did not deduct shipping expenses from sales of perfume products in my calculation.

⁸ Vendor rebates and allowances are considerations given by vendors to customers which in essence represent a reduction of purchase price. Including such vendor rebates and allowances in my net profit calculation increased BCF's net profit on sale of Fendi goods. Due to BCF's arrangement with Scents of Worth, I did not add vendor rebates and allowances to sales of perfume products in my net profit calculation.

C. DETERMINING THE AMOUNT OF EXPENSES TO BE DEDUCTED FROM GROSS PROFIT

As stated above, I determined that BCF's gross profit from sales of Fendi products amounted to approximately \$2.8 million. The expenses that I deducted from this gross profit are discussed below.

Store Expenses

BCF determined that its total store expenses during its 2006 and 2007 fiscal years aggregated to 25% of net sales in each year. Information was not available to perform a similar analysis for earlier years. However, based on the fact that BCF's total selling and administrative expenses (which include store expenses) have remained relatively constant in relation to net sales from 1998 to 2007, I applied the same ratio of 25% to sales of Fendi products. This resulted in the allocation of approximately \$2.3 million of store expenses to sales of Fendi products.

Shipping Expenses, Net of Vendor Rebates and Allowances

BCF determined that shipping expenses, net of vendor rebates and allowances, aggregated to 2.3%, 2.6%, and 2.0% of net sales during its fiscal years 2005, 2006, and 2007, respectively. Information was not available to make a similar determination for earlier years, therefore, I used the most conservative rate for the last three years of 2% of net sales to estimate total shipping expenses, net of vendor rebates and allowances, in calculating the net profit from sales of non-perfume Fendi products.⁹ This resulted in allocation of \$91,649 of shipping expenses, net of vendor rebates and allowances, to sales of Fendi products.^{7 8}

Income Taxes

My deduction of the aforementioned expenses from BCF's gross profit on the sale of Fendi goods resulted in a net pre-tax profit of \$401,397. BCF's combined Federal and State income taxes averaged about 38.6% during its fiscal years 1998 – 2007. I therefore applied a conservative rate of 38% to the pre-tax profit of \$401,397. This resulted in an income tax provision of \$152,528.

⁹ Shipping expenses and vendor rebates and allowances are not part of purchase cost tracked by product in BCF's management information system however they are included in cost of goods sold on BCF's Statement of Operations. BCF's cost of goods sold has remained relatively constant in relation to net sales during its fiscal years 1998 – 2007.

D. SUMMARY

I calculated the net profit from BCF's sales of Fendi products through October 10, 2007 to be \$248,869 as follows:

Total sales of Fendi products		\$	9,119,586
Less cost of Fendi products sold			<u>6,346,641</u>
Gross profit from sales of Fendi products			2,772,945
Less allocated expenses:			
Store expenses	\$	2,279,899	
Shipping expenses, net of vendor rebates		<u>91,649</u>	<u>2,371,548</u>
Pre-tax profit			401,397
Less income taxes			<u>152,528</u>
Net profit from sales of Fendi products		\$	<u><u>248,869</u></u>

I declare under the penalty of perjury that the foregoing is true and correct and was executed this 27th day of March, 2008 at New York, New York.



Robert W. Berliner

Appendix A

Fendi Products
Sales and Net Profit
Summary by Period

	Non-Perfume			Perfume			Total		
	Units	Sales	Net Profit (Loss)	Units	Sales	Net Profit (Loss)	Units	Sales	Net Profit (Loss)
Prior to 10/5/03	27,517	\$ 1,632,474	\$ 146,528	180,831	\$ 3,302,930	\$ (102,391)	208,348	\$ 4,935,404	\$ 44,137
10/5/03 - 12/22/05	17,946	2,820,365	212,144	50,336	825,663	(19,484)	68,282	3,646,028	192,660
12/23/05 - 1/9/06	639	96,056	9,425	1,900	26,448	164	2,539	122,504	9,589
1/10/06 - 10/10/07	327	33,564	115	20,610	382,086	2,368	20,937	415,650	2,483
Total	46,429	\$ 4,582,459	\$ 368,212	253,677	\$ 4,537,127	\$ (119,343)	300,106	\$ 9,119,586	\$ 248,869

Fendi Products
Sales and Net Profit through October 10, 2007
Summary by Division

	Units	Sales	Cost of Goods Sold	Gross Profit	Other Expenses	Pre-Tax Profit (Loss)	Income Tax Provision (Benefit)	Net Profit (Loss)
Non-perfume	35,238	\$ 4,048,740	\$ 2,435,977	\$ 1,612,763	\$ 1,093,160	\$ 519,603	\$ 197,448	\$ 322,155
Perfume	253,677	4,537,127	3,595,334	941,793	1,134,283	(192,490)	(73,147)	(119,343)
Total Ladies' Accessories	288,915	8,585,867	6,031,311	2,554,556	2,227,443	327,113	124,301	202,812
Men's	5,712	283,118	175,792	107,326	76,442	30,884	11,736	19,148
Sports	3,017	130,641	75,980	54,661	35,274	19,387	7,367	12,020
Youth	2,462	119,960	63,558	56,402	32,389	24,013	9,124	14,889
Total	300,106	\$ 9,119,586	\$ 6,346,641	\$ 2,772,945	\$ 2,371,548	\$ 401,397	\$ 152,528	\$ 248,869

Fendi Products - Ladies' Accessories Division
(non-perfume)
Sales and Net Profit

	Units	Sales	Cost of Goods Sold*	Gross Profit	Other Expenses**	Pre-Tax Profit (Loss)	Income Tax Provision (Benefit)***	Net Profit (Loss)
Data retrieved from back up tapes ^(a)	5,613	\$ 157,139	\$ 92,956	\$ 64,183	\$ 42,428	\$ 21,755	\$ 8,267	\$ 13,488
Purged products likely sold prior to 10/5/03 ^(b)	2,978	24,735	21,114	3,621	6,678	(3,057)	(1,162)	(1,895)
Current system data for sales prior to 10/5/03 ^(a)	9,441	1,017,441	591,039	426,402	274,709	151,693.0	57,643	94,050
Total Prior to 10/5/03	18,032	1,199,315	705,109	494,206	323,815	170,391	64,748	105,643
10/5/03 - 12/22/05	16,368	2,727,226	1,656,802	1,070,424	736,351	334,073	126,947	207,126
12/23/05 - 1/9/06	595	92,493	53,087	39,406	24,973	14,433	5,485	8,948
1/10/06 - 10/10/07	243	29,706	20,979	8,727	8,021	706	268	438
Total	35,238	\$ 4,048,740	\$ 2,435,977	\$ 1,612,763	\$ 1,093,160	\$ 519,603	\$ 197,448	\$ 322,155

* - Purchase discounts, vendor allowances, freight, and other costs that are included in COGS on company's statement of operations are included in Other Expenses for the purpose of this calculation.

** - Includes store-related expenses equal to 25% of sales (as determined from BCF's Adjusted EBITDA Calculation for FY 2006 and 2007) and other costs (purchase discounts, vendor allowances, freight, and other) equal to 2% of sales (as determined from BCF's schedule of Cost of Goods Sold for FY 2005 - 2007).

*** - BCF's combined Federal and State income taxes fluctuated between 37.1% and 39.9% during FY 1998 - 2007. A flat rate of 38% is used to calculate income tax provision/benefit for all periods included in this analysis.

^(a) - BCF's management information system is periodically purged of all data related to old products. BCF reviewed certain reports archived in January 2000 through 2002 to determine sales and cost of goods sold of Fendi-branded products that have since been purged and are no longer retained in BCF's current management system.

^(b) - Represents sales of Fendi-branded products that were purged during 2007. Based on BCF's purging policy, sales of these products likely have occurred prior to October 5, 2003. Sales and cost data were obtained from reports generated prior to purging date of each product.

Fendi Products - Ladies' Accessories Division
(perfume)
Sales and Net Profit

	Units	Sales	Commission*	Worth's Commission	BCF's Commission	Other Expenses**	Pre-Tax Profit (Loss)	Income Tax Provision (Benefit)***	Net Profit (Loss)
Data retrieved from back up tapes ^(c)	5,594	\$ 92,096	\$ 73,677	\$ 18,419	(a)	\$ 23,024	\$ (4,605)	\$ (1,750)	\$ (2,855)
Current system data for sales prior to 10/5/03 ^(c)	175,237	3,210,834	2,568,667	642,167	(a)	802,709	(160,542)	(61,006)	(99,536)
Total Prior to 10/5/03	180,831	3,302,930	2,642,344	660,586		825,733	(165,147)	(62,756)	(102,391)
10/5/03 - 6/25/05	41,320	661,373	529,099	132,274	(a)	165,343	(33,069)	(12,567)	(20,502)
6/26/05 - 12/22/05	9,016	164,290	121,575	42,715	(b)	41,073	1,642	624	1,018
Total 10/5/03 - 12/22/05	50,336	825,663	650,674	174,989		206,416	(31,427)	(11,943)	(19,484)
12/23/05 - 1/9/06	1,900	26,448	19,572	6,876	(b)	6,612	264	100	164
1/10/06 - 10/10/07	20,610	382,086	282,744	99,342	(b)	95,522	3,820	1,452	2,368
Total	253,677	\$ 4,537,127	\$ 3,595,334	\$ 941,793		\$ 1,134,283	\$ (192,490)	\$ (73,147)	\$ (119,343)

* - Included in Cost of Goods Sold on Summary by Division schedule.

** - Includes store-related expenses equal to 25% of sales (as determined from BCF's Adjusted EBITDA Calculation for FY 2006 and 2007).

*** - BCF's combined Federal and State income taxes fluctuated between 37.1% and 39.9% during FY 1998 - 2007. A flat rate of 38% is used to calculate income tax provision/benefit for all periods included in this analysis.

(a) - Calculated based on BCF's commission rate of 20% (see attached June 21, 2000 Licensed Department Agreement between BCF and Model Imperial, Inc.).

(b) - Calculated based on BCF's commission rate of 26% (see attached June 25, 2005 amendment to Licensed Department Agreement between BCF and Scents of Worth, Inc., formerly Model Imperial, Inc.).

(c) - BCF's management information system is periodically purged of all data related to old products. BCF reviewed certain reports archived in January 2000 through 2002 to determine sales of Fendi-branded products that have since been purged and are no longer retained in BCF's current management system.

Fendi Products - Men's Division
Sales and Net Profit

	Units	Sales	Cost of Goods Sold*	Gross Profit	Other Expenses**	Pre-Tax Profit (Loss)	Income Tax Provision (Benefit)***	Net Profit (Loss)
Estimated sales on back up tapes ^(a)	994	\$ 10,988	\$ -	\$ 10,988	\$ 2,967	\$ 8,021	\$ 3,048	\$ 4,973
Current system data for sales prior to 10/5/03	4,168	233,158	147,617	85,541	62,953	22,588	8,583	14,005
Total Prior to 10/5/03	5,162	244,146	147,617	96,529	65,920	30,609	11,631	18,978
10/5/03 - 12/22/05	482	34,071	24,961	9,110	9,199	(89)	(34)	(55)
12/23/05 - 1/9/06	42	3,463	1,768	1,695	935	760	289	471
1/10/06 - 10/10/07	26	1,438	1,446	(8)	388	(396)	(150)	(246)
Total	5,712	\$ 283,118	\$ 175,792	\$ 107,326	\$ 76,442	\$ 30,884	\$ 11,736	\$ 19,148

* - Purchase discounts, vendor allowances, freight, and other costs that are included in COGS on company's statement of operations are included in Other Expenses for the purpose of this calculation.

** - Includes store-related expenses equal to 25% of sales (as determined from BCF's Adjusted EBITDA Calculation for FY 2006 and 2007) and other costs (purchase discounts, vendor allowances, freight, and other) equal to 2% of sales (as determined from BCF's schedule of Cost of Goods Sold for FY 2005 - 2007).

*** - BCF's combined Federal and State income taxes fluctuated between 37.1% and 39.9% during FY 1998 - 2007. A flat rate of 38% is used to calculate income tax provision/benefit for all periods included in this analysis.

(a) - BCF's management information system is periodically purged of all data related to old products. Gross profit from sales of these purged products was estimated based on the ratio of units sold and total sales derived from review of back up tapes for non-perfume goods in the Ladies' Accessories division to total units sold and sales for same division as of February 5, 2008 without a provision for cost of goods sold.

Fendi Products - Sports Division
Sales and Net Profit

	Units	Sales	Cost of Goods Sold*	Gross Profit	Other Expenses**	Pre-Tax Profit (Loss)	Income Tax Provision (Benefit)***	Net Profit (Loss)
Estimated sales on back up tapes ^(a)	525	\$ 5,070	\$ -	\$ 5,070	\$ 1,369	\$ 3,701	\$ 1,406	\$ 2,295
Current system data for sales prior to 10/5/03	2,383	123,341	72,593	50,748	33,302	17,446	6,629	10,817
Total Prior to 10/5/03	2,908	128,411	72,593	55,818	34,671	21,147	8,035	13,112
10/5/03 - 12/22/05	108	2,220	3,321	(1,101)	600	(1,701)	(646)	(1,055)
12/23/05 - 1/9/06	-	-	-	-	-	-	-	-
1/10/06 - 10/10/07	1	10	66	(56)	3	(59)	(22)	(37)
Total	3,017	\$ 130,641	\$ 75,980	\$ 54,661	\$ 35,274	\$ 19,387	\$ 7,367	\$ 12,020

* - Purchase discounts, vendor allowances, freight, and other costs that are included in COGS on company's statement of operations are included in Other Expenses for the purpose of this calculation.

** - Includes store-related expenses equal to 25% of sales (as determined from BCF's Adjusted EBITDA Calculation for FY 2006 and 2007) and other costs (purchase discounts, vendor allowances, freight, and other) equal to 2% of sales (as determined from BCF's schedule of Cost of Goods Sold for FY 2005 - 2007).

*** - BCF's combined Federal and State income taxes fluctuated between 37.1% and 39.9% during FY 1998 - 2007. A flat rate of 38% is used to calculate income tax provision/benefit for all periods included in this analysis.

(a) - BCF's management information system is periodically purged of all data related to old products. Gross profit from sales of these purged products was estimated based on the ratio of units sold and total sales derived from review of back up tapes for non-perfume goods in the Ladies' Accessories division to total units sold and sales for same division as of February 5, 2008 without a provision for cost of goods sold.

Fendi Products - Youth Division
Sales and Net Profit

	Units	Sales	Cost of Goods Sold*	Gross Profit	Other Expenses**	Pre-Tax Profit (Loss)	Income Tax Provision (Benefit)***	Net Profit (Loss)
Estimated sales on back up tapes ^(a)	429	\$ 4,660	\$ -	\$ 4,660	\$ 1,258	\$ 3,402	\$ 1,293	\$ 2,109
Current system data for sales prior to 10/5/03	986	55,942	30,054	25,888	15,104	10,784	4,098	6,686
Total Prior to 10/5/03	1,415	60,602	30,054	30,548	16,362	14,186	5,391	8,795
10/5/03 - 12/22/05	988	56,848	31,616	25,232	15,349	9,883	3,755	6,128
12/23/05 - 1/9/06	2	100	64	36	27	9	3	6
1/10/06 - 10/10/07	57	2,410	1,824	586	651	(65)	(25)	(40)
Total	2,462	\$ 119,960	\$ 63,558	\$ 56,402	\$ 32,389	\$ 24,013	\$ 9,124	\$ 14,889

* - Purchase discounts, vendor allowances, freight, and other costs that are included in COGS on company's statement of operations are included in Other Expenses for the purpose of this calculation.

** - Includes store-related expenses equal to 25% of sales (as determined from BCF's Adjusted EBITDA Calculation for FY 2006 and 2007) and other costs (purchase discounts, vendor allowances, freight, and other) equal to 2% of sales (as determined from BCF's schedule of Cost of Goods Sold for FY 2005 - 2007).

*** - BCF's combined Federal and State income taxes fluctuated between 37.1% and 39.9% during FY 1998 - 2007. A flat rate of 38% is used to calculate income tax provision/benefit for all periods included in this analysis.

(a) - BCF's management information system is periodically purged of all data related to old products. Gross profit from sales of these purged products was estimated based on the ratio of units sold and total sales derived from review of back up tapes for non-perfume goods in the Ladies' Accessories division to total units sold and sales for same division as of February 5, 2008 without a provision for cost of goods sold.

EXHIBITS

Exhibit A

ROBERT W. BERLINER, CPA, CFE
622 Third Avenue, New York, NY 10017
(212) 503-8853

CURRICULUM VITAE

PROFESSIONAL EXPERIENCE

1990 to Date	Marks Paneth & Shron LLP Partner, Litigation Services
1987 to 1990	Spicer & Oppenheim National Executive Director of Accounting and Auditing Chairman, National Accounting and Auditing Standards Committee Member, International Audit Committee National Director of Education New York Office Director of Litigation Support Services
1954 to 1987	Arthur Young (now Ernst & Young)
1976 to 1987	National Director of Practice Development - Accounting and Auditing Assistant National Director of Auditing (National Office)
1970 to 1976	Client-Handling Partner (New York Office)
1967 to 1970	Managing Partner (Sao Paulo, Brazil Office)
1958 to 1967	Audit Principal, Audit Manager & Senior Accountant (New York Office)
1956 to 1958	Military Service - U.S. Army
1954 to 1956	Staff Accountant (New York Office)

PROFESSIONAL ACTIVITIES

American Institute of Certified Public Accountants:

1987 to 1991	Member of Forecasts and Projections Task Force
1982 to 1984	Member of Financial Feasibility Study Group
1982 to 1984	Chairman of Task Force on Auditor Involvement with Current Value Information
1980 to 1984	Chairman of Task Force on Materiality and Audit Risk
1979 to 1982	Chairman of Task Force on Required Supplementary Information
1979 to 1982	Member of Auditing Standards Board
1979 to 1982	Member of Planning Subcommittee of the Auditing Standards Board
1977 to 1978	Chairman of Task Force on Current Value Disclosures
1976 to 1979	Member of Task Force on Conceptual Framework of Accounting and Reporting

ROBERT W. BERLINER, CPA, CFE**Professional Activities – (Continued)**

Financial Accounting Standards Board:

1987 to 1989	Member of Emerging Issues Task Force
1987 to 1989	Member of FAS 96 Implementation Task Force
1983 to 1985	Member of Task Force for the Review of SFAS 33

Securities and Exchange Commission:

1976 to 1978	Member of Replacement Cost Disclosure Advisory Committee
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New York State Society of Certified Public Accountants:

2006 to Date	Chairman of Auditing Standards and Procedures Committee
2002 to 2006	Member of Auditing Standards and Procedures Committee
2006 to Date	Member of Accounting and Auditing Oversight Committee
1992 to Date	Member of Litigation Services Committee
1989 to 1992	Member of General Committee on Accounting and Auditing
1987 to 1989	Chairman of Professional Ethics Committee
1983 to 1986	Member of Professional Ethics Committee

New York University Stern School of Business:

1986 to 1991	Adjunct Professor of Accounting
1984 to 1987	Member of Board of Management Development Laboratory
1976 to 1986	Member of Board of Editorial Advisors of Ross Institute of Accounting

Executive Enterprises:

1977 to 1987	Member of Corporate Accounting Advisory Council
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University of Michigan:

1983 to 1987	Member of Paton Accounting Center Advisory Board
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Community Activities

Cannon Point South, Inc. Cooperative Housing Corporation:

2002 to Date	Treasurer, member of the Board of Directors and Executive Committee, Chair of the Finance Committee
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Florham on the Fairways Condominium Association:

1985 to 2000	President and Member of the Board of Trustees
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ROBERT W. BERLINER, CPA, CFE

Community Activities – (Continued)

New Philharmonic Orchestra of New Jersey:

1994 to 2000	Chairman of the Finance Committee
1993 to 2000	Member of the Board of Trustees

New York University:

1988 to 1989	Vice Chairman of the Alumni Council
1986 to 1989	Member of the Alumni Council

New York University Stern School of Business:

1987 to 1988	President of the Alumni Association
1973 to 1988	Member of the Board of Directors of the Alumni Association

Education

New York University Stern School of Business - M.B.A., 1961

Wharton School, University of Pennsylvania - B.S. in Economics, 1954

Beta Alpha Psi Honorary Accounting Fraternity, President
Beta Gamma Sigma Honorary Society

Professional Certifications

Certified Fraud Examiner, Association of Certified Fraud Examiners, 1995

Certified Public Accountant, New Jersey, 1992

Certified Public Accountant, New York, 1960

PROFESSIONAL MEMBERSHIPS

Accountants Club of America
American Accounting Association
American Institute of Certified Public Accountants
Association of Certified Fraud Examiners
Institute of Management Accountants
New York State Society of Certified Public Accountants

**CASES IN WHICH ROBERT W. BERLINER HAS
TESTIFIED AS AN EXPERT AT TRIAL AND/OR DEPOSITION
WITHIN THE PRECEEDING FOUR YEARS**

George Lehocky on behalf of himself, et al. v. Tidel Technologies, Inc., et al.
United States District Court for the Southern District of Texas, Houston Division
Case No. H-01-3741
Testimony at deposition on March 31, 2004

Joseph White v. Heartland High-Yield Municipal Bond Fund, et al.
United States District Court, Eastern District of Texas
Case No. 00-1388
Testimony at deposition on June 9, 2004
Testimony at trial on December 2, 2005, December 5, 2005, and December 6, 2005

In Re Broadcom Corp. Securities Litigation
United States District Court, Central District of California, Southern Division
No. SACV 01-275 GLT
Testimony at deposition on August 30, 2004

The Official Committee of Unsecured Creditors of Allegheny Health, Education & Research Foundation vs. PricewaterhouseCoopers, L.L.P.
United States District Court for the Western District of Pennsylvania
Civil Action No. 00-684
Testimony at deposition on February 16, 2005

In Re Electronic Data Systems Corporation Securities Litigation
United States District Court for the Eastern District of Texas, Tyler Division
Case No. 6:03-CV-110
Testimony at deposition on June 24, 2005

The Huff Alternative Income Fund, L.P. against PricewaterhouseCoopers LLP
Superior Court of New Jersey, Law Division – Bergen County
Docket No. L-9204-03
Testimony at deposition on September 30, 2005

Israel Discount Bank Ltd. vs. Braude & Co., et al.
The District Court of Haifa;
CF 1009/00
Testimony at trial on November 16, 2005 and November 17, 2005

**CASES IN WHICH ROBERT W. BERLINER HAS
TESTIFIED AS AN EXPERT AT TRIAL AND/OR DEPOSITION
WITHIN THE PRECEEDING FOUR YEARS**

Bayerische Landesbank et al. v. JPMorgan Chase Bank et al.

United States District Court, Southern District of Texas

Case No. 04-CV-2154

Testimony at deposition on September 13, 2006 and September 14, 2006

In Re: McKesson HBOC, Inc. Securities Litigation

United States District Court, Northern District of California, San Jose Division

Case No. 04-CV-2154

Testimony at deposition on March 14, 2007

In Re: Veeco Instruments, Inc. Securities Litigation

United States District Court, Southern District of New York

No. 7:05-md-1695 (CM) (GAY)

Testimony at deposition on June 19, 2007

E*Trade Financial Corporation and E*Trade Bank v. Deutsche Bank AG

United States District Court, Southern District of New York

05 Civ. 0902 (RWS)

Testimony at deposition on September 26, 2007

Ian J. Berg against III Holding, Inc. and Itouchu International, Inc.

International Centre for Dispute Resolution

American Arbitration Association

Case No.: 50 166 T 00233 06

Testimony at hearing on October 17, 2007

Magten Asset Management Corporation, et al. v. NorthWestern Corporation

United States District Court, District of Delaware

C.A. No. 04-1494-(JJF); Re: D.I. 94

Testimony at deposition on November 8, 2007

Exhibit C

**LIST OF ALL PUBLICATIONS
AUTHORED OR COAUTHORED BY
ROBERT W. BERLINER
WITHIN THE PRECEDING TEN YEARS**

“How Litigators Can Use Accounting Experts To Enhance Their Effectiveness”,
Practising Law Institute – Legal Malpractice Course Handbook, Vol. II, June 1999,
pp. 567-581.

Exhibit D

**DESCRIPTION OF MPS AND ITS
LITIGATION SERVICES PRACTICE**

MPS is a middle-market professional service firm that traces its roots to 1907. It employs approximately 500 people, more than 300 of which are professionals who provide a full range of services as accountants, auditors, and tax and business advisors to a diversified clientele consisting principally of privately-owned companies and high net-worth individuals.

The firm has grown to become one of the largest independent accounting firms in the New York Metropolitan area. It was recently ranked 15th largest in the New York region (Crain's New York Business) and 28th largest nationally (Accounting Today). The firm's main office is located in Manhattan and it has additional offices in Long Island and Westchester.

The litigation services and forensic accounting practice has grown in recent years to become a significant component of the firm's business. The matters in which the firm has been involved range from large-scale, high-profile security litigation to disputes among family members, business owners, individuals and their employers. The firm's litigation services consultants and forensic accountants have many years of hands-on experience in a wide range of matters, handle matters nationwide, and testify in federal and state courts across the country.

DRAFT

Exhibit E

MATERIALS CONSIDERED

- Defendants objections and responses to Plaintiffs first set of interrogatories;
- Defendants supplemental response to Plaintiffs first set of interrogatories;
- October 10, 2007 Memorandum & Order;
- January 15, 2008 letter from Defendants' counsel to Hon. Michael Dolinger;
- February 22, 2008 letter from Defendants' counsel to Hon. Michael Dolinger;
- February 22, 2008 declaration of James J. Donohue;
- Plaintiffs' memorandum of law in support of additional contempt remedies;
- Plaintiffs' memorandum of law in support of their proposed judgment for contempt;
- March 5, 2008 declaration of Richard L. Mattiaccio in support of application for interim award of fees and disbursements of consultant;
- March 5, 2008 declaration and report of James J. Donohue;
- June 21, 2000 licensed department agreement between Model Imperial and BCF;
- June 25, 2005 first amendment to amended and restated licensed department agreement between Scents of Worth (formerly Model Imperial) and BCF;
- December 15, 2007 e-mail from Model Imperial to Stacy Haigney;
- BCF Forms 10-K for fiscal 2000 – 2007;
- BCF annual reports for fiscal 2000 – 2005;
- BCF 2006 and 2007 adjusted EBITDA calculation;
- BCF 2005, 2006, and 2007 schedule of cost of goods sold;
- Various other documents including e-mails, reports, and schedules prepared by BCF employees;
- Discussions with various BCF employees;
- E-mails and discussions with James J. Donohue and Richard DeFelice of CRA International;
- ARB 43, *Restatement and Revision of Accounting Research Bulletins*.